

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
SECOND APPEAL NO.379 OF 2025

M/s. Gandhi Sales Corporation & Anr. Vs. Premlata Kishorilal Banarasi

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. A.R. Prasad, Advocate for the Appellants.

Mr. Masood Shareef, Advocate for the Respondent.

CORAM: ROHIT W. JOSHI, J.

DATED : 20th JANUARY, 2026

1. A substantial question of law came to be framed in the present appeal vide Order dated 16.12.2025. On a condition that the decretal amount of Rs.8,79,397/- will be deposited by the appellant with simple interest @6% per annum from 01.01.2010, this Court has granted stay to the execution of the impugned decrees.
2. Learned advocate for the appellant states that pursuant to the Order dated 16.12.2025, the appellant deposited an amount of Rs.1,00,000/- with the learned Trial Court on 09.01.2026.
3. He has tendered across the bar a pursis dated 20.01.2026 which is signed by him and also the appellant. It is stated in the pursis that an amount of Rs.10,09,647/- will be deposited by the appellant on or before 30.04.2026. The schedule of payment is mentioned in the pursis which is as under:-

<u>Amount</u>	<u>Date</u>
Rs.1,50,000/-	28.02.2026
Rs.2,50,000/-	31.03.2026
Rs.6,09,647/-	30.04.2026

4. While calculating the balance amount, deductions are made towards the amount deposited by the appellant with the Court of learned Judicial Magistrate First Class, Nagpur in the proceedings initiated against him under Section 138 of the Negotiable Instruments Act, 1881. Further deduction is made towards waiver of interest for Covid-19 lockdown period.

5. The statement made in the pursis that the amount in accordance with the aforesaid schedule will be deposited on or before 30.04.2026 is accepted as an undertaking to the Court. Appellant to note that the breach of undertaking may result in action for contempt under the Contempt of Court Act, 1971 and also under Article 215 of the Constitution of India.

6. Mr. Prasad, learned advocate for the appellant states that the arrest warrant issued by the Executing Court in Special Darkhast No.117/2023 may be stayed in view of the statement made in the pursis, that the appellant will deposit the amount as directed by this Court on or before 30.04.2026.

7. The learned advocate for the respondent raises a strong objection. He draws attention to the Order dated 27.02.2025 passed by the learned Executing Court whereby, the arrest warrant came to be issued against the appellant and the order dated 12.03.2025 passed by this Court in *Writ petition No.1344/2025 M/s. Gandhi Sales Corporation, through its Proprietor Shri Pramod Kumar Gandhi and Anr. Vs. Ku. Premlata D/o. Kishorilal Banarasi*, dismissing the petition challenging the said order.

8. It appears from the reading of the order dated 12.03.2025 passed in the Writ Petition No.1344/2025, that the

warrant was issued under Order 21 Rule 37 of the Code of Civil Procedure, 1908 (for short “CPC”). The warrant which is issued under the said provision is for the purpose of securing the presence of the judgment debtor to show-cause as to why he should not be committed to the civil prison. Once the judgment debtor appears or is brought before the Court, pursuant to the service of warrant under Order 21 Rule 37 of the CPC, the learned Executing Court is required to conduct an enquiry under Order 21 Rule 40 of the CPC to decide as to whether the order of detention in civil prison should be passed.

9. The said order was passed while the first appeal filed by the appellant was pending and application for grant of stay was rejected by the learned First Appellate Court. In the present second appeal, a conditional order of stay is granted. However, it is directed that the interim order shall operate only after the amount is deposited. In view of this subsequent development, it will be open for the appellant to appear before the learned Executing Court and to participate in the enquiry to be held under Order 21 Rule 40 of the CPC.

10. Learned advocate for the appellant, on instructions from the appellant makes a positive statement that the appellant shall remain present before the learned Executing Court on the next date of hearing and shall abide by all orders to be passed by the learned Executing Court. The said statement is also accepted as an undertaking to the Court.

11. In the event the learned Executing Court passes an order of civil imprisonment against the appellant, the same will not be executed/implemented if the schedule of payment is honored by the appellant.

12. Time for depositing the amount is extended as per the schedule of payment in the pursis dated 20.01.2026.

(ROHIT W. JOSHI J.)

Privel